

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ADAM DEAN FOX, et al.,

Defendants.

CASE No. 1:20-CR-183

HON. ROBERT J. JONKER

_____/

AMENDED ORDER RE-SCHEDULING SENTENCING

This matter is set for sentencing on Monday, December 12. The government has filed its sentencing brief, but the defendant has yet to do so. In addition, sentencing of the co-defendant, Barry Croft, is not set for hearing until Wednesday, December 28. Neither party has filed any materials yet for that sentencing, and the Probation Officer has not yet filed the Final PSR either. The Court believes there will be advantages to having both sentencing hearings occur at about the same time, and after all sides have filed all the sentencing materials in both cases.

In addition, in preliminary review of the materials filed so far in defendant Fox's case, the Court has identified a potential guideline issue that will likely arise in both cases and that would benefit from further development before the sentencing hearings. In particular, the PSR uses U.S.S.G. § 2M6.1 to score the Section 2332a conviction for Conspiracy to use a Weapon of Mass Destruction. However, that guideline does not appear to apply when the underlying conviction rests on a generic Section 921 destructive device under Section 2332a(c)(2)(A), rather than more toxic or radioactive weapons specified in Section 2332a(c)(2)(B)-(D). *See* App. Note 1 (limiting "[w]eapon of mass destruction" for purposes of the particular guideline). *See also United States*

v. Allen, 364 F. Supp. 3d 1234, 1241-43 (D. Kan. 2019); *United States v. Aref*, 2007 WL 804814, at * 3 (N.D. N.Y. March 14, 2007) (discussing interplay of U.S.S.G. § 2K1.4 and § 2M6.1).

Another potential issue in Defendant Fox's case is whether the two counts of conviction should be grouped under U.S.S.G. § 3D1.2(b) because they "involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan." The PSR chose not to group the offenses, but instead scored them separately under U.S.S.G. § 3D1.3 and then applied § U.S.S.G. 3D1.4 to determine a combined offense level.

To permit better development of these issues, and any others the parties may choose to highlight, and to ensure that all sentencing materials are on file in both cases before either defendant is sentenced, the Court **ADJOURNS** the December 12 sentencing date for defendant Fox and sets the following deadlines applicable to both cases:

1. The sentencing hearing for defendant Fox is re-scheduled to **December 27, 2022 at 10:00 a.m.** The sentencing date for defendant Croft remains as currently scheduled on December 28.
2. Defendant Fox shall file his initial sentencing brief, including any motion for departure and variance, and any response to the initial government filing not later than **December 9.**
3. Defendant Croft and the government shall file their initial sentencing briefs, including any motions for departure or variance, not later than **December 15.** Any responsive filings are due not later than **December 22.**

IT IS SO ORDERED.

Dated: December 7, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE